Arizona Medical Board

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DRAFT MINUTES FOR REGULAR SESSION MEETING
Held on February 6, 2008 and February 7, 2008
9535 E. Doubletree Ranch Road · Scottsdale, Arizona

Board Members

William R. Martin III, M.D., Chair
Douglas D. Lee, M.D., Vice Chair
Dona Pardo, Ph.D., R.N., Secretary
Robert P. Goldfarb, M.D., F.A.C.S.
Patricia R. J. Griffen
Ram R. Krishna, M.D.
Todd A. Lefkowitz, M.D.
Lorraine L. Mackstaller, M.D.
Paul M. Petelin Sr., M.D.
Germaine Proulx
Amy J. Schneider, M.D., F.A.C.O.G.

Executive Director's Report

Lisa Wynn, Executive Director, thanked the Board members for the opportunity to serve as the agency's Executive Director and expressed her appreciation to Staff for their assistance. Ms. Wynn informed the Board that the Agency will be doing a soft launch of the new database beginning February 13, 2008 and that the implementation of the new database continues on schedule. She reported that there has been a steady increase in the number of physicians licensed by the Board. During the months of November and December, the Arizona Medical Board received 96 and 98 MD license applications, respectively, for a total of 194. Ninety-three (93) licenses were issued in November and 70 licenses were issued in December. Ms. Wynn stated that the Case Management Office has been doing great job and reported there are 352 cases currently open. Dr. Goldfarb stated that when the Board is presented with the number of new licensees in the State, it is important to report how many physicians are actively practicing, how many are practicing in the State of Arizona and how many are retired.

Agency FY-08 Accumulative Budget Summary – (December 2007)

Ms. Wynn advised the Board that the Joint Legislative Budget Committee proposal to sweep $567,000 from our reserve fund does not appear to be a serious consideration at this time as this option did not appear in the final of options for fiscal year 2008 published by the Appropriation Committee's Chairman. She stated she would continue to monitor this situation closely and would keep the Board members advised. She also stated that the Agency was recently required to provide half a million dollars for this sweep from its reserved funds and that the Agency currently holds less than $1.5 million dollars in its reserve funds; however, some of these funds are reflected as reserve funds although they are not. Ms. Wynn stated she will be meeting with the Governor to discuss this matter to find a resolution. Dr. Goldfarb stated that the Board is aware of the Governor's fund sweep; however, it is imperative to reduce the backlog of cases pending Formal Hearing and stated the Board can not afford not to retain outside legal counsel as this could potentially endanger the public. Dr. Goldfarb expressed concern that some physicians request Formal Hearings as they believe it will take years to adjudicate their case and, in the meantime, continue to practice.

Legislative Update

Ms. Wynn informed the Board that two significant Bills involving the Board are making their way towards approval. Senate Bill 1091 allows the Board to create a training module for applications, provides an exception from the Administrative Procedures Act for the establishment of fees, and provides civil immunity for third party investigators. She stated that the Board would still vote to approve fees annually, but when the fees are increased it would no longer have to go through rule writing, as it typically takes approximately two years to prepare a rule packet. Senate Bill 1078 allows a physician to write a prescription without a physical exam to a person who is believed to be at risk because of that person's contact with a communicable disease. This Bill has been proposed by the Department of Health Services, who is now in the process of narrowing down the communicable diseases.

Legal Advisor/Litigator's Report

Anne Froedge, Assistant Attorney General (AAG), introduced Mary Williams, AAG, Supervisor, Licensing Enforcement Section of the Attorney General's Office. Ms. Froedge informed the Board that the Court upheld the Board's decision in the Dr. Golob matter regarding internet prescribing and it is now a published opinion. Ms. Froedge stated that this matter will be placed on an upcoming agenda.

Chair's Report

Dr. Martin thanked Staff for their hard work and diligence during the search process for a new Executive Director, specifically, Lisa McGrane, Investigational Review Office Manager, Patricia McSorley, Case Review Manager, Kelly Sems, M.D., Chief Medical Consultant, Suzann Grabe, Licensing Office Manager, Evangeline Webster, Business/HR Office Manager, and Roger Downey, Public Information Officer. Dr. Martin said that the efforts would have been fruitless without the guidance of Amanda Diehl, Deputy Executive Director. Dr. Martin welcomed Ms. Wynn and stated it is an honor to have her serve as Executive Director.

The Board discussed general security issues noting that there are security guards present when the Board meets in open session; however, Dr. Martin noted that a gentleman who spoke during the call to public opened his bag to present a U.S. flag. He stated that the Board did not know what the gentleman was removing from his bag and that it could have been a weapon. The Board expressed concern that the Agency needs more security measures in place. Dr. Martin informed the Board that the security guard is only present during the Board meetings, not during regular work hours for the employees of the Agency. The Board instructed Staff to look into the feasibility of obtaining metal detectors for the Agency's offices.

The Federation of State Medical Boards will be meeting and the Board has been invited to attend. Dr. Martin requested that Board Members interested in attending notify him so that arrangements can be made.

Consideration of Board's Position Regarding the Practice of Allopathic Medicine Under a Homeopathic License

Ms. Wynn informed the Board that the Executive Director of the Homeopathic Board has proposed a Bill that may address some of the Board's concerns regarding the practice of allopathic medicine under a homeopathic license. Ms. Wynn asked that the Board table the issue and allow Board Staff the opportunity to review the matter further. Board Members agreed to table the issue for further review.

Election of Board Officers

MOTION: Dr. Goldfarb moved to accept the candidates for the election of Board Officers as Dr. Martin, Chair; Dr. Lee, Vice Chair, and Dr. Pardo, Secretary.
SECONDED: Dr. Krishna
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

Approval of Scope of Practice Guidelines

Dr. Goldfarb reminded the Board that this Subcommittee was formed after a number of issues came before the Board; specifically, one involving an internal medicine physician who began performing liposuction resulting in multiple patient deaths. Dr. Goldfarb stated that currently no Boards are limiting what an allopathic physician can or can not practice once the physician has been licensed. Dr. Goldfarb recommended that the Board approve the Guidelines, but not disband the Subcommittee yet, as they can continue to review and look into the matter further. Dr. Goldfarb suggested the Guidelines be sent to licensees with a cover letter from the Executive Director, conveying the importance of reading the Guidelines so they are aware of the Board's expectations.

The Board questioned whether the Scope of Practice Guidelines should be published as a Substantive Policy Statement. Anne Froedge, AAG, stated she would look into the matter as she believed it would have to interpret a rule or statute. She suggested the Board adopt the Guidelines for now and, if legally permitted, change it to a Substantive Policy Statement.

MOTION: Dr. Goldfarb moved to approve the Scope of Practice Guidelines. Upon review and approval by legal counsel, automatically change to a Substantive Policy Statement.
SECONDED: Dr. Mackstaller

Dr. Petelin congratulated the Chair and Subcommittee Members on their accomplishment and encouraged the Subcommittee to do whatever it takes to refine the Guidelines.

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

Approval of Minutes

MOTION: Dr. Petelin moved to approve the December 13-14, 2007 Regular Session Meeting Minutes, including Executive Session; the December 13, 2007 Summary Action Meeting Minutes; and the December 15, 2007 Special Meeting Minutes, including Executive Session.
SECONDED: Dr. Mackstaller
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

ADVISORY LETTERS

MOTION: Dr. Krishna moved to issue an Advisory Letter for item numbers 5, 10, 11, 12, 13, 15, 16, 17, and 18.
SECONDED: Dr. Petelin
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
1.	MD-06-0964A	AMB	MARGARET R. KHOURI, M.D.	27739	Return for further investigation.

Dr. Pardo pulled this case for discussion. Dr. Pardo noted that the case involved another physician and questioned if Staff had opened a case against him/her. Staff confirmed that a case had not been opened. Other Board Members did not believe the other physician's role in this case was an issue, but agreed Dr. Pardo had a valid concern. The Board noted that Dr. Khouri attended a Physician Assessment and Clinical Evaluation (PACE). The Board questioned if the recommendations from the PACE evaluation were documented to demonstrate that Dr. Khouri complied with the recommendations. The Board also noted that Dr. Khouri was issued an Advisory Letter previously for a similar violation and questioned why a second Advisory Letter was recommended rather than discipline. Kelly Sems, M.D., Chief Medical Consultant, informed the Board that there were several patients' charts that were reviewed during the course of the investigation and that the files were separated and sent to four different outside medical consultants to review. Two of the outside medical consultants (OMC) found deviations from the standard of care and two OMC's found no deviations. The Board did not find that Dr. Khouri had followed up on all of the recommendations from PACE. Staff informed the Board that Dr. Khouri was not ordered by the Board to attend PACE.

MOTION: Dr. Martin moved to go into executive session.
SECONDED: Dr. Pardo
Vote: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

The Board went into Executive Session for legal advice at 5:15 p.m.
The Board returned to Open Session at 5:18 p.m.
No deliberations or discussions were made during Executive Session.

MOTION: Dr. Goldfarb moved to return the matter for further investigation.
SECONDED: Dr. Pardo

Dr. Goldfarb requested Staff review the PACE evaluation and recommendations. Dr. Martin stated he would like to see that Dr. Khouri has complied with the recommendations prior to voting on the level of discipline.

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
2.	MD-07-0378B	AMB	MICHAEL S. WENG, M.D.	18604	Issue Advisory Letter for failing to utilize appropriate precautions during surgery to prevent neurovascular injury. This was a one time error that does not rise to the level of discipline.

Dr. Martin stated for the record that he knew Dr. Weng, but that it would not affect his ability to adjudicate the case. Jay Fradkin was present and spoke during the call to public on behalf of Dr. Weng. Mr. Fradkin noted that Staff found Dr. Weng failed to utilize appropriate precautions to prevent neurovascular injury. Mr. Fradkin stated that Dr. Weng did the exact opposite as he went above and beyond to treat the patient and that this is a known complication and happens despite the best possible care. Dr. Goldfarb pulled this case for discussion. Gerald Moczynski, M.D., Medical Consultant, summarized the case for the Board. He stated that the patient had the indications appropriate for surgical intervention for her knee injury. However, he stated that there was no mention of the portal of entry in the medical records from the surgery. He opined that this was a technical error with devastating consequences requiring two other corrective surgeries. The Board noted that Dr. Weng did not provide an explanation in his response other than that his surgery was adequate. Dr. Krishna opined that the complication from surgery should have been recognized by Dr. Weng. Dr. Moczynski stated that the complication was difficult to recognize while performing the procedure as knee surgery is a difficult procedure in and of itself. Dr. Petelin noted that the violation is due to Dr. Weng's failure to recognize the complication sooner. Dr. Moczynski noted that Dr. Weng did respond once notified by the nurses and when he saw the patient the morning following the surgery, he ordered an angiogram that revealed the pseudoaneurysm. Dr. Krishna said that had Dr. Weng acted sooner, the outcome would not have been different. Dr. Pardo questioned if Dr. Weng presented for a formal interview, whether the case would rise to the level of discipline.

MOTION: Dr. Pardo moved to reject the Advisory Letter and invite the physician for a formal interview.
SECONDED: Dr. Goldfarb

Dr. Goldfarb stated that the case would possibly still not rise to the level of discipline. Dr. Petelin spoke against the motion and stated that the complication is described as a technical complication of the procedure. Dr. Petelin did not believe that the level of discipline would change if Dr. Weng appeared for a formal interview.

VOTE: 2-yay, 7-nay, 1-abstain, 0-recuse, 1-absent.

MOTION FAILED.

MOTION: Dr. Mackstaller moved to issue an Advisory Letter for failing to utilize appropriate precautions during surgery to prevent neurovascular injury. This was a one time error that does not rise to the level of discipline.
SECONDED: Dr. Petelin
VOTE: 7-yay, 1-nay, 2-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
3.	MD-07-0108A	AMB	RODNEY S. IANCOVICI, M.D.	28530	Issue Advisory Letter for failing to properly follow PA supervision statutes. This matter does not rise to the level of discipline.

Dr. Pardo pulled this case for discussion and noted that Dr. Iancovici received an Advisory Letter in 2007 for a similar violation. Vicki Johansen, Case Manager, informed the Board that this case involved Dr. Iancovici allowing his PA to practice at a separate location without first obtaining Board approval. She stated that a medical consultant reviewed the charts of the patients seen by the PA and that the medical consultant did not find deviations from the standard of care. The Board noted that the patients seen by the PA were not established patients of Dr. Iancovici and questioned how Dr. Iancovici could possibly supervise for patients that were not his. Staff found it mitigating that it was an emergent situation that caused the PA to practice at a different location. Staff informed the Board that this incident occurred around the same timeframe as his previous violation in which he received an Advisory Letter. The Board noted that there was no patient harm identified in this case.

MOTION: Dr. Petelin moved to issue an Advisory Letter for failing to properly follow PA supervision statutes. This matter does not rise to the level of discipline.
SECONDED: Dr. Schneider
VOTE: 9-yay, 1-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
4.	MD-07-0277A	K.S.	JACK N. POLES, M.D.	8677	Dismiss.

Dr. Poles was present and spoke during the call to public. He summarized the case for the Board and said that when patient WS presented to him, he had multiple health issues. Dr. Poles was prescribing Restoril over the course of his treatment with no complaints. He said that WS's family never voiced concerns regarding the prescription and that he had no control over the additional memory loss that WS suffered. Dr. Mackstaller pulled this case for discussion and stated that the records indicated WS was receiving a routine prescription each month for Restoril and was seen regularly by Dr. Poles. Bhupendra Bhatheja, M.D., Medical Consultant, informed the Board that Restoril is typically prescribed for seven to ten days. Dr. Mackstaller agreed, but stated that most primary care physicians in the community typically prescribe sleep-aid medication for a longer period based upon the patient's insomnia. Dr. Mackstaller noted that WS stopped refilling his medication once his wife passed away, but increased the amount of medication he was taking.

MOTION: Dr. Mackstaller moved for Dismissal.
SECONDED: Dr. Goldfarb
VOTE: 8-yay, 2-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
5.	MD-07-0316A	M.R	EDWARD EADES, M.D.	19656	Issue Advisory Letter for failure to document adequate consent by not explaining risks and benefits. This matter does not rise to the level of discipline.
6.	MD-07-0505A	R.O.	JENNIFER K. O'NEILL, M.D.	33230	Return for further investigation.

William Wolf, M.D., Medical Consultant, summarized the case for the Board. This case involved thirteen patients medical records that were reviewed by a medical consultant for quality of care. The medical consultant found deviations from the standard of care in three of the thirteen cases reviewed. Dr. Wolf stated that Dr. O'Neill failed to document why her recommendations differed from those of the radiologist and it appeared that Dr. O'Neill did not review the radiology reports or recommendations. Dr. Schneider noted there was a delay in care for a period of three months. Dr. Petelin said that it was disconcerting that from reviewing the complaint that a group of radiologists formed together and filed against Dr. O'Neill and that she was subject to a peer review at the hospital.

Dr. Petelin stated he found significant deviations in ten of the thirteen cases. For cases seven, ten, and thirteen, Dr. Petelin did not find any deviations from the standard of care. Dr. Petelin disagreed with the standard of care in the first case and said that the patient should have been re-excised at the first operation. He noted that Dr. O'Neill's failure to do so resulted in two additional surgeries. In the second case, Dr. Petelin requested the pathology report and patient medical records from the other treating physician. For case three, Dr. Petelin said that biopsies should have been obtained with clarification that agrees with the mammographic finding and requested additional records regarding this patient. In case four, Dr. Petelin noted that four procedures were done in this case. He said the operative report indicates Dr. O'Neill knew that she did not remove all calcifications, but nothing additional was done at that time. Dr. Petelin opined that a re-excision with sentinel node should have been performed at the time of the first excision for comedocarcinoma. For case number five, Dr. Petelin said a palpable mass is a relative

contraindication to stereotaxic biopsy unless the palpable mass is in a different location through a mammographic finding. Dr. Petelin noted inadequate records in case number six and questioned when the magnetic resonance imaging (MRI) was performed. Dr. Petelin noted no breast exam was performed at the patient's first and second visit in case number eight. He questioned that if a sentinel node was indicated, why it was not identified at the first excision or the second, rather than requiring a third procedure. Dr. Petelin opined that the patient in case number nine should have undergone a mastectomy during the initial surgery and questioned why Dr. O'Neill performed an axillary dissection instead of a sentinel node. In case number eleven, Dr. Petelin found potential harm as a delay in care. For case number twelve, Dr. Petelin noted that to bill a patient for an axillary dissection, at least eight lymph nodes need to be removed. Dr. O'Neill only removed four lymph nodes from this patient. Dr. Petelin questioned if Dr. O'Neill charged the patient for the ultrasound-guided biopsy when she did not perform one.

Dr. Petelin suggested the case be returned for further investigation for a second review by an outside medical consultant that specializes in breast surgery and has no relation to the parties involved. Dr. Petelin instructed Staff to invite Dr. O'Neill for a formal interview at the completion of the investigation. Dr. Petelin also instructed Staff to obtain Dr. O'Neill's billing and coding records to review for adequacy.

MOTION: Dr. Petelin moved to return the case for further investigation and then invite the physician for a formal interview.
SECONDED: Ms. Griffen
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

Kelly Sems, M.D., Chief Medical Consultant, informed the Board that it would not be in its best interest to guide the reviewer in such a way by outlining what their concerns were and asked for a more general review for quality of care. Dr. Petelin agreed and stated that he would like the medical consultant to focus on three main areas of care; quality of general surgical care provided, adequacy of medical records, and appropriateness of the billing and coding. Dr. Petelin questioned if it were appropriate for the Board to obtain the results of Dr. O'Neill's peer review. Anne Froedge, Assistant Attorney General, said she would need to look into it further for clarification.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
7.	MD-07-0396A	AMB	EDGAR H. HERNANDEZ, M.D.	11305	Issue Advisory Letter for failing to timely evaluate a patient with small bowel obstruction. This matter does not rise to the level of discipline.

Dr. Martin stated that he had served on a Committee with Dr. Hernandez in the past, but that it would not affect his ability to adjudicate the case. Dr. Hernandez addressed the Board during the call to public. He summarized the case for the Board stating that he took the patient into surgery at 4:00 a.m., after being contacted by the nurse that there had been a change in the patient's status. Dr. Hernandez stated that even if he would have seen the patient earlier, he would not have changed his actions and that the outcome would not have changed. Dr. Mackstaller pulled this case for discussion to confirm that the procedure was carried out appropriately. Dr. Petelin opined that Dr. Hernandez did not have a lot of time in this case and that an Advisory Letter was the appropriate action.

MOTION: Dr. Mackstaller moved to issue an Advisory Letter for failing to timely evaluate a patient with small bowel obstruction. This matter does not rise to the level of discipline.
SECONDED: Dr. Lee
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
8.	MD-06-0942A	AMB	ALAN K. OSUMI, M.D.	23063	Return for further investigation.

Dr. Goldfarb stated that he knows Mr. Gaines professionally but it would not affect his ability to adjudicate the case. Dr. Osumi was present and addressed the Board during the call to public. He said this case involved signing a radiology report by proxy. Dr. Osumi stated that proxy signatures are widely used in the practice of radiology, but in no way means that he reviews each case personally. Mr. Ed Gaines spoke during the call to public as legal counsel for Dr. Osumi. Mr. Gaines said the radiologist involved misread the films and Dr. Osumi was trained that proxy signing was adequate. He said Dr. Osumi is not responsible for the contents of the report solely based on his signature. Mr. Gaines opined that if the Board's position is that the radiologist has to review the report when signing, this will change the practice of radiology state-wide.

Dr. Mackstaller pulled this case for discussion. Dr. Krishna opined that when a physician signs a report, he/she is responsible for its contents and that if the radiologist read the report incorrectly, Dr. Osumi had the responsibility of the misreading by him signing off on the report. Ingrid Haas, M.D., Medical Consultant, informed the Board that this matter was reviewed by a radiologist who opined that Dr. Osumi deviated from the standard of care by signing the radiographic report without reading it. Dr. Haas stated that the still imaging did not reflect the appropriate evaluation, which is critical in determining how a pregnancy is handled at that point in time. Dr. Pardo questioned if the Board should make a public statement regarding its position on signature by proxy. Dr. Martin said the community will hear the Board's position on the subject once the Board takes final action in this case. Dr. Goldfarb stated he would like more information regarding signature by proxy prior to taking final action in this case. Dr. Petelin noted that the American College of Radiology has its own guidelines for interpreting ultrasounds. Kelly Sems, M.D., Chief Medical Consultant, informed the Board that the radiologist who reviewed the case did not specifically state anything regarding the proxy

signing. The Board concluded that the matter should be returned for further investigation to obtain a second opinion for a definitive answer and to obtain the American College of Radiology guidelines for interpreting ultrasounds.

MOTION: Dr. Mackstaller moved to return this case for further investigation.
SECONDED: Dr. Lee
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
9.	MD-07-0102A	R.P.	THEODORE L. RUDBERG, M.D.	11018	Issue Advisory Letter for failing to refer a patient to a wound care specialist and for inadequate medical records. This matter does not rise to the level of discipline.

RP addressed the Board during the call to public on behalf of the patient, his father. RP stated that the Department of Health Services conducted an investigation of the Arizona Veteran's Home and the issues surrounding the facility have been in the media for over a year. He said that the VA Home had been cited for violations and that as a result some changes were made; however, other required changes were not made and that patients are at jeopardy.

Dr. Rudberg was also present and spoke during the call to public. Dr. Rudberg stated that the Staff Investigational Review Committee (SIRC) report was incorrect in stating that when a patient is referred to the wound care clinic, they are seen by a nurse. Dr. Rudberg said typically, a wound care specialist would see the patient. He informed the Board that the VA Home and VA Clinic are separate entities. Dr. Rudberg claimed that the nurse who evaluated this patient did not follow orders to refer the patient to the wound care clinic. He said the medical records found to be inadequate were not his records as he was out of town at that time.

Kathleen Coffer, M.D., Medical Consultant, summarized the case for the Board. Dr. Coffer said that a consultation was written to the wound care clinic and the patient was seen by a nurse. Three weeks later, the patient was subsequently sent to another hospital with an infected gluteal ulceration. The patient returned to the VA Home, became ill and later died of complications. Dr. Coffer informed the Board that the orders for the wound care were subsequently signed by Dr. Rudberg.

MOTION: Dr. Mackstaller moved to issue and Advisory Letter for failing to refer a patient to a wound care specialist and for inadequate medical records. This matter does not rise to the level of discipline.
SECONDED: Dr. Krishna
VOTE: 9-yay, 1-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
10.	MD-07-0272A	AMB	RONALD J. CASTRO, M.D.	12701	Issue Advisory Letter for failing to determine a speculum's temperature prior to inserting it into the patient causing subsequent second degree perineal burns. The violation is a one time technical error that does not rise to the level of discipline.
11.	MD-07-0372A	N.M.	GEORGE L. SIBLEY, M.D.	9085	Issue Advisory Letter for failing to timely address abnormal glucose levels and failing to address abdominal pain that was inconsistent with gastroesophageal reflux disease. This matter does not rise to the level of discipline.
12.	MD-07-0525A	A.R.	MOHAMED H. EL-GASIM, M.D.	36344	Issue Advisory Letter for resuscitating a dehydrated two year-old patient with D5 ½ normal saline. This matter does not rise to the level of discipline.
13.	MD-07-0779A	S.L.	MARY J. SARRANTONIO, M.D.	26472	Issue Advisory Letter for failing to refill a minor diabetic patient's insulin when there was no clear indication that the patient had transferred care. This matter does not rise to the level of discipline.
14.	MD-07-0862A	K.C.	VIKRAM KAPUR, M.D.	29592	Issue Advisory Letter for inadequate medical records. This case does not rise to the level of discipline.

MOTION: Dr. Schneider moved to issue an Advisory Letter for inadequate medical records. This case does not rise to the level of discipline.
SECONDED: Dr. Petelin
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
15.	MD-07-0349A	B.S	LAWRENCE E. KRAMER, M.D.	21710	Issue Advisory Letter for failing to properly evaluate an unexplained anemia, failure to follow up on ordered labs and other diagnostic tests, and for inadequate medical records. This matter does not rise to the level of discipline.
16.	MD-07-0284A	AMB	CHIRAG C. VYAS, M.D.	30540	Issue Advisory Letter for prescribing Augmentin to a patient with a history of Penicillin allergy. This matter does not rise to the level of discipline.
17.	MD-07-0278A	AMB	ASHFAQUE SAYA, M.D.	25872	Issue Advisory Letter for failing to admit an older patient with

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
					significant abdominal findings, for failing to obtain a repeat urinalysis and for inadequate medical records. This matter does not rise to the level of discipline.
18.	MD-07-0527A	A.L.	KARA E. JOHNSON, M.D.	29307	Issue Advisory Letter for prescribing Bactrim to a patient with a documented allergy to sulfa. This matter does not rise to the level of discipline.

REVIEW OF EXECUTIVE DIRECTOR (ED) DISMISSALS

MOTION: Dr. Krishna moved to uphold the ED Dismissal for item numbers 2, 3, 4, 5, 6, 7, 8, 12, and 13.
SECONDED: Dr. Petelin
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
1.	MD-06-0839A	AMB	ALAN C. SCHWARTZ, M.D.	9416	Table.

MOTION: Dr. Goldfarb moved to table this matter.
SECONDED: Dr. Lee
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
2.	MD-07-0302A	N.N.	DENNIS D. SWENA, M.D.	15304	Uphold ED Dismissal.
3.	MD-07-0622A	J.M.	MARGARITA MARTINEZ, M.D.	10110	Uphold ED Dismissal.
4.	MD-07-0348A	K.P.	PETER R. SEIPEL, M.D.	23800	Uphold ED Dismissal.
5.	MD-07-0177A	L.H.	WILLIAM R. HEARTER, M.D.	16116	Uphold ED Dismissal.
6.	MD-07-0614A	A.F.	LINDA E. LEECH, M.D.	27207	Uphold ED Dismissal.
7.	MD-07-0429A	D.L.	RONALD J. CANIGLIA, M.D.	21593	Uphold ED Dismissal.
8.	MD-07-0859A	D.P.	LAURA L. VANDENHEEDE, M.D.	26282	Uphold ED Dismissal.
9.	MD-07-0471A	J.K.	RUTH E. KOHLMEIER, M.D.	30350	Uphold ED Dismissal.

JK was present and spoke during the call to public. JK presented the Board with photographs of injuries his son sustained. He stated that his son's autopsy dictated by Dr. Kohlmeier indicated that the injuries did not exist; however, he advised the Board that an independent pathologist dictated a second autopsy stating that the injuries were sustained. JK requested the Board reopen the case for further investigation as Dr. Kohlmeier turned his family away in their time of need and failed to fulfill her duties as a physician. Kathleen Coffer, M.D., Medical Consultant, summarized the case for the Board. It was alleged that Dr. Kohlmeier failed to perform an adequate autopsy of JK's son, RK. The cause of death was drowning and the manner was identified as accidental. A second autopsy was performed a month later that contained the same cause of death with the manner undetermined. Dr. Schneider was concerned that the first autopsy did not identify puncture marks, but the second report did find something consistent with a puncture mark. Dr. Petelin noted that the amount of cocaine found in RK's system was lethal. The Board noted that the outside medical consultant who reviewed this case for quality of care found that Dr. Kohlmeier met the standard of care.

MOTION: Dr. Krishna moved to uphold the ED dismissal.
SECONDED: Dr. Mackstaller
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
10.	MD-07-0191A	D.S.	ANDREAS KYPRIANOU, M.D.	32610	Uphold ED Dismissal.

AJ was present and spoke during the call to public. Dr. Kyprianou performed a bedside thoracentesis on her mother and left immediately following the procedure. AJ's mother experienced complications and underwent an emergency operation. It was not until the second emergency surgery that a nicked artery was identified. AJ said that her mother is still recovering from the complication and surgeries after one year. William Wolf, M.D., Medical Consultant, summarized the case for the Board. It was alleged that Dr. Kyprianou failed to properly perform a thoracentesis resulting in a severed artery. The outside medical consultant who reviewed the case for quality of care opined that the standard of care was met. The outside medical consultant further opined that Dr. Kyprianou went above and beyond the standard of care by using sinography during the procedure.

MOTION: Dr. Schneider moved to uphold the ED dismissal.
SECONDED: Dr. Lefkowitz
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
11.	MD-07-0003A	P.M.	NAVTEJ S. TUNG, M.D.	30264	Uphold ED Dismissal.

PM was present and addressed the Board during the call to public. She stated that each time she presented to Dr. Tung for treatment, she expressed concerns that she was experiencing odd reactions, but he would tell her that he never saw a patient react in such a way to epidural shots and then would give her another shot. PM attempted to reach Dr. Tung after the third shot, but was not able to reach him. PM's husband also spoke during the call to public stating that he witnessed shot number three and that PM experienced blackouts following the second shot and informed Dr. Tung, but he would only tell them that he had never seen that before. Dr. Tung eventually told PM that he was researching the medication to see if it was a bad batch, but they had never heard back from him. Joann Felix, relative of PM, also spoke during the call to public. Ms Felix said that PM has struggled desperately in the past two years due to the epidural shots.

Dr. Goldfarb questioned whether the second and third injections were necessary as they may have not been indicated. Carol Peairs, M.D., Medical Consultant, summarized the case for the Board. Dr. Peairs said that PM's recollection of the incident is inconsistent to what she filed in her complaint with the Board. Dr. Goldfarb questioned whether Dr. Tung's medical recordkeeping was adequate. Dr. Peairs said that it met the standard of care, that it was marginal and that the medical records did not reflect PM's complaints. The Board noted that the medical records were not ideal, but did not warrant taking action.

MOTION: Dr. Krishna moved to uphold the ED dismissal.
SECONDED: Dr. Goldfarb
VOTE: 9-yay, 1-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
12.	MD-07-0077A	R.S.	PHILIP G. POIRIER, M.D.	14031	Uphold ED Dismissal.
13.	MD-07-0078A	R.S.	CHRIS S. REUST, M.D.	19327	Uphold ED Dismissal.

OTHER BUSINESS

MOTION: Dr. Mackstaller moved to accept the proposed consent agreements in item numbers 1 and 2.
SECONDED: Ms. Griffen
VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
1.	MD-06-0755A	M.D.	EDWARD G. BLANKSTEIN, M.D.	10529	Accept proposed consent agreement for a Letter of Reprimand for failure to properly dispense medications and for failure to maintain adequate records.
2.	MD-07-0109A	C.F.	ARTHUR FORD, M.D.	11461	Accept proposed consent agreement for a Letter of Reprimand for failure to use a paralytic agent prior to intubating with a rigid laryngoscope.
3.	MD-06-0062A	AMB	STEPHEN P. SUTTON, M.D.	28812	Issue previous Findings of Fact, Conclusions of Law and Order, as amended, for a Letter of Reprimand for failing to appropriately treat a Pseudomonas infection of the urinary tract, for failing to perform a nephrectomy and failing to discuss all the alternatives with a patient.

Emma Mamaluy, Assistant Attorney General (AAG), presented the case to the Board. She informed the Board that the request for rehearing/review had been granted by the Board to review supplemental articles submitted by Dr. Sutton. She requested that if the Board had any questions, it vote to enter into executive session for legal advice.

MOTION: Dr. Martin moved to go into executive session.
SECONDED: Dr. Pardo
Vote: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

The Board went into Executive Session for legal advice at 1:11 p.m.
The Board returned to Open Session at 1:16 p.m.
No deliberations or discussions were made during Executive Session.

Board Members confirmed that they received and reviewed the material.

MOTION: Dr. Petelin moved to grant the request for rehearing/review to review the articles submitted by the physician and issue the previous Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand for failing to appropriately treat a Pseudomonas infection of the urinary tract, for failing to perform a nephrectomy and failing to discuss all the alternatives with a patient.
SECONDED: Dr. Krishna

ROLL CALL VOTE: Roll call vote was taken and the following Board Members voted in favor of the motion: Dr. Goldfarb, Ms. Griffen, Dr. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, and Dr. Schneider. The following Board Member was absent: Ms. Proulx.
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

Anne Froedge, AAG, informed the Board that changes were made to the original Findings of Fact, Conclusions of Law and Order and requested the Board reopen the matter to adopt the amended Findings of Fact, Conclusions of Law and Order.

MOTION: Dr. Lee moved to reopen the matter.
SECONDED: Dr. Pardo
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

AMENDED MOTION: Dr. Krishna moved to adopt the Findings of Fact, Conclusions of Law and Order, as amended, for a Letter of Reprimand for failing to appropriately treat a Pseudomonas infection of the urinary tract, for failing to perform a nephrectomy and failing to discuss all the alternatives with a patient.
SECONDED: Dr. Lee
ROLL CALL VOTE: Roll call vote was taken and the following Board Members voted in favor of the motion: Dr. Goldfarb, Ms. Griffen, Dr. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, and Dr. Schneider. The following Board Member was absent: Ms. Proulx.
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
4.	MD-05-0884A	AMB	HARSHAD S. PATEL, M.D.	22757	Table the matter and return for further investigation.

Sue Dana summarized the matter for the Board. The Board previously issued Dr. Patel a Decree of Censure and Five Years Probation restricting him from working more than thirty hours per week, treating male patients without a chaperone, treating any female patients and requiring that he obtain extensive treatment including sex offense therapy, individual and family therapy. Ms. Dana informed the Board that Dr. Patel complied with the terms of his Probation and he requested that his Order be modified to increase the number of hours he may work, see male patients without a chaperone, and see female patients with a chaperone requirement. The Board's Evaluation Review Committee (ERC) reviewed the matter and noted that Dr. Patel's evaluators recommended that his hours be determined by the Board and that he be allowed to see patients as he requests. ERC opined that Dr. Patel needed to continue to have a chaperone and not see female patients. Anne Froedge, AAG, informed the Board that it may enter into executive session to review confidential records regarding Dr. Patel's treatment.

MOTION: Dr. Martin moved to go into executive session.
SECONDED: Dr. Lee
Vote: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

The Board went into Executive Session for legal advice at 1:27 p.m.
The Board returned to Open Session at 1:35 p.m.
No deliberations or discussions were made during Executive Session.

Dr. Martin opined that more information is needed prior to modifying Dr. Patel's Order, specifically, to ensure that the second evaluator had all previous evaluation results.

MOTION: Dr. Martin moved to table the matter and return for further investigation.
SECONDED: Dr. Lee
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
5.	MD-06-0147A	M.L.	ALAN CHASBY SACKS, M.D.	9475	Accept modification of Board Order to remove the therapy requirement.

Dr. Sacks addressed the Board during the call to public. He stated that he had pursued further education as mandated by the Board and underwent courses online along with book reviews. The Board mandated that he obtain ten hours CME regarding boundary issues; Dr. Sacks stated that he had completed approximately three times that amount within the past year. Dr. Sacks also stated that he was grateful for the public forum to express his apologies to the patient and family involved in this case and requested that he no longer be required to undergo psychotherapy. Ms. Dana informed the Board that Dr. Sacks had received a Decree of Censure in October 2006, along with a Five Year Probation requiring a chaperone, psychotherapy, and CME in boundary violations. ERC reviewed the matter and recommended termination of the CME requirement as Dr. Sacks completed three times the amount required. Ms. Dana concluded that she had received letters from Dr. Sacks' therapist saying he has done well and he should be released from his therapy.

MOTION: Dr. Goldfarb moved to accept the modification of Board Order to remove the therapy requirement.
SECONDED: Dr. Krishna
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
6.	MD-07-0340A	AMB	KENNETH J. TOLMAN, M.D.	36900	Rescind referral to formal hearing without prejudice and have staff keep track of the trial. The case shall return to formal hearing upon resolution of the criminal trial or upon the physician's availability to return to Arizona.

Donna Umstead addressed the Board during the call to public on behalf of Dr. Tolman. Ms. Umstead stated that over the past several months the Arizona Medical Board received information from the State of Pennsylvania regarding pending legal action against Dr. Tolman. She stated that the allegations against him have not yet been resolved, but he maintains his innocence in the matter. Dr. Tolman agreed to voluntarily suspend his license pending the matter in Court. She urged the Board that further action in this matter must be postponed until Dr. Tolman could defend himself personally.

Dr. Goldfarb noted that Dr. Tolman is restricted from leaving Pennsylvania until the Court matter is resolved. Celina Shepherd, Case Manager, informed the Board that a conviction is not required to move ahead. The Board noted that Dr. Tolman was offered a consent agreement to voluntarily surrender his license; however, he declined as he maintains his innocence.

MOTION: Dr. Mackstaller moved to go into executive session.
SECONDED: Dr. Lee
Vote: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

The Board went into Executive Session for legal advice at 1:43 p.m.
The Board returned to Open Session at 1:50 p.m.
No deliberations or discussions were made during Executive Session.

MOTION: Dr. Goldfarb moved to rescind referral to formal hearing without prejudice and have staff keep track of the trial. The case shall return to formal hearing upon resolution of the criminal trial or upon the physician's availability to return to Arizona.
SECONDED: Dr. Lee
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
7.	MD-07-L026A	AMB	SCOTT A. STONE, M.D.	N/A	Uphold ED denial of licensure.

Marlene Young, Case Manager, summarized the case for the Board. Dr. Stone submitted his application for licensure, but failed to disclose disciplinary action from his residency program. Dr. Stone recently informed the Board that was diagnosed with bipolar disorder that was treated for approximately five to six years. Staff noted a history of dishonesty as Dr. Stone failed to disclose his medical condition on his application for licensure.

MOTION: Dr. Krishna moved to uphold the ED Denial of Licensure.
SECONDED: Ms. Griffen
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
8.	MD-06-0456A	BANNER ESTRELLA MEDICAL CENTER	MICHAEL R. ROLLINS, M.D.	30379	Deny motion for rehearing or review

Dean Brekke, AAG, presented this case to the Board. He stated that he reviewed Dr. Rollins' petition for rehearing and reviewed the transcripts and record and submitted his advice in a confidential memorandum to the Board.

MOTION: Dr. Martin moved to deny the motion for rehearing or review.
SECONDED: Dr. Lee

Dr. Lee requested that the word "operative" be changed to "operate" within the Order.

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
9.	MD-06-0959A	AMB	SYED Z. TAHIR, M.D.	19801	Accept Draft Findings of Fact, Conclusions of Law and Order, as amended, for a Letter of Reprimand for failing to know the results of an intraoperative x-ray taken due to an abnormal needle count prior to leaving the

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
					attendance of the patient; for failing to make himself aware of the findings of the intraoperative x-ray and subsequent T-tube cholangiogram reflecting sponges retained in the abdomen prior to discharging the patient, resulting in the patient becoming ill and requiring a second surgery; and for failure to document the abnormal needle count and its resolution.

Dr. Krishna was recused from this case. Ms. Froedge informed the Board that she corrected the wording under the Order to properly state "intraoperative" rather than "interoperative."

MOTION: Dr. Lee moved to accept the draft Findings of Fact, Conclusions of Law and Order, as amended, for a Letter of Reprimand for failing to know the results of an intraoperative x-ray taken due to an abnormal needle count prior to leaving the attendance of the patient; for failing to make himself aware of the findings of the intraoperative x-ray and subsequent T-tube cholangiogram reflecting sponges retained in the abdomen prior to discharging the patient, resulting in the patient becoming ill and requiring a second surgery; and for failure to document the abnormal needle count and its resolution.
SECONDED: Dr. Pardo
VOTE: 9-yay, 0-nay, 0-abstain, 1-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
10.	MD-08-0035A	AMB	ERNEST BENSCH, M.D.	4617	Accept proposed consent agreement for surrender of license.

Danielle Steger, Case Manager, summarized the case for the Board. Dr. Bensch was placed on a practice limitation for health issues in December 2007 after it was determined that he was not able to safely practice medicine. The practice limitation was non-disciplinary and stated that he shall not practice clinical medicine or any medicine involving direct patient care and was prohibited from prescribing any form of treatment including prescription medications until applying for and receiving Board approval. Following the effective date of the practice limitation, the Board received an e-mail from a pharmacy stating that there had been prescriptions written and signed by Dr. Bensch. Dr. Bensch admitted to Board Staff that he gave patient SF a few signed but undated prescriptions when he last saw her. He stated the prescriptions were undated so that SF could fill them as needed. There were no other prescriptions written by Dr. Bensch following the effective date of his Order. No conclusive violations were sustained, but Dr. Bensch surrendered and agreed to cease the practice of medicine as of January 2008 for health reasons.

MOTION: Dr. Krishna moved to reject the consent agreement for surrender and offer the physician a disciplinary consent agreement for Surrender.
SECONDED: Dr. Martin

Dr. Martin noted that the public would be served in the same way regardless whether the surrender was disciplinary or non-disciplinary. Dr. Krishna agreed as long as the public is protected. However, Dr. Krishna stated that the surrender should be disciplinary so that other licensing entities would know of Dr. Bensch's violations of the Medical Practice Act. The Board noted that Dr. Bensch may reapply for licensure after five years of the effective date of the surrender. Dr. Lee agreed with Dr. Krishna, but stated that the reality of an eighty-three year-old physician with a medical condition returning to practice medicine is unlikely and spoke against the motion. Dr. Mackstaller agreed with Dr. Lee, but stated that she is aware of physicians that are elderly and retired but continue to write prescriptions. The Board noted that this would not prohibit Dr. Bensch from obtaining a medical license in another state.

ROLL CALL VOTE: Roll call vote was taken and the following Board Members voted in favor of the motion: Dr. Krishna, Dr. Martin, Dr. Pardo, Dr. Petelin, and Dr. Schneider. The following Board Members voted against the motion: Dr. Goldfarb, Ms. Griffen, Dr. Lee, Dr. Lefkowitz, and Dr. Mackstaller. The following Board Member was absent: Ms. Proulx.
VOTE: 5-yay, 5-nay, 0-abstain, 0-recuse, 1-absent.
MOTION FAILED.

MOTION: Dr. Lee moved to accept the proposed consent agreement for surrender of license.
SECONDED: Dr. Mackstaller
ROLL CALL VOTE: Roll call vote was taken and the following Board Members voted in favor of the motion: Dr. Goldfarb, Ms. Griffen, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, and Dr. Schneider. The following Board Members voted against the motion: Dr. Krishna, Dr. Martin, Dr. Pardo, and Dr. Petelin. The following Board Member was absent: Ms. Proulx.
VOTE: 6-yay, 4-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
11.	MD-07-0116A	K.W.	MARIO T. PARISE, M.D.	19729	Dismiss.

Bhupendra Bhatheja, M.D., Medical Consultant, summarized the case for the Board. The outside medical consultant who reviewed this case opined that Dr. Parise met the standard of care.

MOTION: Dr. Mackstaller moved for Dismissal.
SECONDED: Dr. Krishna

ROLL CALL VOTE: Roll call vote was taken and the following Board Members voted in favor of the motion: Dr. Goldfarb, Ms. Griffen, Dr. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, and Dr. Schneider. The following Board Member was absent: Ms. Proulx.
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

WEDNESDAY, FEBRUARY 6, 2008

Call to Order
The meeting was called to order at 9:30 a.m.

Roll Call
The following Board Members were present: Dr. Goldfarb, Ms. Griffen, Dr. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, and Dr. Schneider. The following Board Member was absent: Ms. Proulx.

Call to the Public
Susan McGroder was present and spoke during the call to public on behalf of a patient involved in a case against Dr. Rudberg, Medical Director, of the Arizona State Veteran's Home. She requested that the Board not rely upon the records obtained from the Home as their records are not complete. Ms. McGroder stated her father's diagnosis of prostate cancer was missed and there were numerous offenses that were cited in her initial complaint.

All other statements issued during the call to public appear beneath the case referenced.

FORMAL INTERVIEWS

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
2.	MD-07-0161A	AMB	HILARIO JUAREZ, M.D.	12148	Draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand for failing to perform a timely and adequate history and physical, for inaccurate documentation of an operative procedure, for inaccurate documentation of a physical exam, which could, if an emergency arose, contribute to misinformation in the treatment of the patient. Within six months, obtain CME in recordkeeping and documentation.

Dr. Petelin stated that he knew Dr. Juarez professionally, but it would not affect his ability to adjudicate the case. Dr. Juarez was present with legal counsel, Cristina Chait. During the course of the investigation, three patients' files were reviewed by a medical consultant for quality of care; however, deviations from the standard of care were identified in only one. Staff found that Dr. Juarez failed to obtain a complete history and physical on patient JJ thirty days prior to the procedure and failed to evaluate preoperatively a new onset of anemia. Dr. Juarez also failed to adequately document a physical exam and failed to maintain adequate records. Staff found it mitigating that JJ failed to disclose to Dr. Juarez her recent vaginal bleeding at the time she presented for the elected procedure.

Dr. Juarez explained that JJ was a morbidly obese female patient with multiple health issues who presented to him for open gastric bypass surgery. Dr. Juarez stated he reviewed JJ's blood work the night prior to surgery that indicated a drop in her hemoglobin and hematocrit; however, this was not documented in the medical record nor was a discussion with JJ noted in the chart. He admitted that he did not perform an extensive history and physical the morning of the surgery. Dr. Juarez admitted that he did not perform a genitalia examination of JJ; however, one was noted in her medical record that it was performed. Dr. Petelin commented that had a genitalia exam been performed, Dr. Juarez would have found and been able to act on the drop in JJ's hemoglobin and hematocrit. Dr. Petelin noted that the report was inadequate in stating the surgery was performed laparoscopically as it was an open gastric bypass procedure. Dr. Juarez stated he did not have JJ's medical record in front of him when he dictated the procedure and he was doing several dictations at one time. In closing, Ms. Chait said that the records issue was from five years ago, and the patient had an excellent outcome. Dr. Petelin sustained a violation of A.R.S. §32-1401 (27)(e) based on an inadequate history and physical, an inadequate operative report, and Dr. Juarez failed to document his knowledge and awareness of the preoperative hemoglobin and hematocrit that were decreased and in the anemic range. Dr. Petelin said the standard of care requires a recent and thorough history and physical. Dr. Juarez failed to list all the prior surgeries and he failed to evaluate the patient for new found anemia. Dr. Petelin found it mitigating that the patient did not inform Dr. Juarez of her recent vaginal bleeding so that her surgery would not be postponed or delayed.

MOTION: Dr. Petelin moved for a finding of Unprofessional Conduct in violation of A.R.S. §32-1401 (27)(e)- Failing or refusing to maintain adequate records on a patient; and A.R.S. §32-1401 (27)(q) - Any conduct that is or might be harmful or dangerous to the health of the patient or the public.
SECONDED: Dr. Goldfarb
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

Dr. Petelin opined that there is insufficient evidence to support disciplinary action. However, Dr. Petelin said he found it aggravating that Dr. Juarez has prior history with the Board with regards to recordkeeping.

MOTION: Dr. Petelin moved to issue an Advisory Letter for failing to perform a timely and adequate history and physical, for inaccurate documentation of an operative procedure, for inaccurate documentation of a physical exam, which could, if an emergency arose, contribute to misinformation in the treatment of the patient. Within six months, obtain CME in recordkeeping and documentation. There is insufficient evidence to support discipline.
SECONDED: Dr. Lefkowitz

Dr. Goldfarb said Dr. Juarez's dictation was concerning to him. He said it was obviously the standard to save up a number of dictations and do them at the same time. Dr. Krishna was concerned that Dr. Juarez may not know the importance of the patient's medical record. Dr. Pardo said that she was concerned that the recording of an examination of the genitalia was unethical since he did not perform one. Dr. Martin agreed and said he was concerned when viewing Dr. Juarez's prior Board history for similar recordkeeping issues.

ROLL CALL: Roll call vote was taken and the following Board Members voted in favor of the motion: Dr. Lefkowitz and Dr. Petelin. The following Board Members voted against the motion: Dr. Goldfarb, Ms. Griffen, Dr. Krishna, Dr. Lee, Dr. Mackstaller, Dr. Martin, Dr. Pardo, and Dr. Schneider.
VOTE: 2-yay, 8-nay, 0-abstain, 0-recuse, 1-absent.
MOTION FAILED.

MOTION: Dr. Goldfarb moved for a draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand for failing to perform a timely and adequate history and physical, for inaccurate documentation of an operative procedure, for inaccurate documentation of a physical exam, which could, if an emergency arose, contribute to misinformation in the treatment of the patient. Within six months, obtain CME in recordkeeping and documentation.
SECONDED: Dr. Krishna

Dr. Petelin said it is not uncommon to operate on patients with a hemoglobin and hematocrit at the same level this patient had. He commented that the numbers themselves would not have precluded him from proceeding with the elective surgery. Dr. Goldfarb said the Letter of Reprimand is for potential harm in that an inadequate history and physical and an inadequate operative report could, if an emergency arose, contribute to misinformation.

ROLL CALL VOTE: Roll call vote was taken and the following Board Members voted in favor of the motion: Dr. Goldfarb, Ms. Griffen, Dr. Krishna, Dr. Lee, Dr. Mackstaller, Dr. Martin, Dr. Pardo, and Dr. Schneider. The following Board Members voted against the motion: Dr. Lefkowitz and Dr. Petelin. The following Board Member was absent: Ms. Proulx.
VOTE: 8-yay, 2-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

Board Educational Seminar

Dean Brekke, Assistant Attorney General (AAG), addressed the Board stating that Board Educational Seminars will be reviewing the role of the AAGs and that the AAGs plan to meet with some Board Members to review specific cases that have come before the Board. Mr. Brekke explained the terms used regarding the legal roles. Legal Advisor: This individual will be appointed to provide the daily legal advice to the Board and Board Staff. Advocates/Litgators: These are individuals who take matters to Administrative Hearing. Independent Advice: This is when the AAG is conflicted out of providing advice. In this case, an independent advisor from the Solicitor General's Office (SGO) will be available to help in that process.

The Legal Advisor will assume the lead in most of the advice that is provided to the Board and the AG's office is in the process filling the Legal Advisor position. Once a case goes to hearing, the AAGs represent the case for the State of Arizona and Board Members are considered judges. The AAGs can no longer have communication with the Board regarding those pending cases. The Board will no longer receive confidential memorandums from the AAGs, but rather a pleading that will also be provided to the opposing party for a chance to respond.

Emma Mamaluy, AAG, provided the Board with a general overview of the different categories of legal advice that the AAGs provide. Subpoenas: The Board receives a considerable number of subpoenas involving third party litigation. The AAGs review the subpoenas and provide legal advice. If the matter ends in litigation, the AAGs are there to defend the Board. Legislation: The AAGs are not Lobbyists. They may help with the wording to ensure that it comports with the Board's wishes and will advise on impact of potential laws. Public Records: When there are unusual public records requests, the AAGs provide legal advice. Rules: Similar to Litigation, the AAGs review to see how new Rules will affect the Board. Substantive Policy Statements: Same as Rules and Litigation, the AAGs look at possible ways this may affect the Board. Investigations: There are times when Staff requires legal guidance because the opposing party may not comply with Staff requests. Licensing: The AAGs provide general advice to ensure that the Board is complying with Arizona State Law. Staff Investigational Review Committee (SIRC): This is a critical stage in the case when the AAGs are typically first involved. The AAGs thoroughly analyze the case and attend SIRC meetings. They review

the notice that was provided, evaluate the factual basis for the standard of care, and attend as non-voting members. Evaluation Review Committee (ERC): Similar to SIRC, the AAGs provide legal advice and legal review. Interim Orders, Practice Restrictions and Limitations: The AAGs provide legal advice and defend the Board when the Orders are challenged by opposing counsel. Consent Agreements: The AAGs provide legal advice review. Board Meetings: The AAGs attend the bi-monthly meetings and are available for legal advice. If it is a matter that was at hearing, the SGO Legal Advisor steps in to advise the Board. Following Board Meetings, the Legal Advisor typically drafts the Findings of Fact, Conclusions of Law and Order. Conflict of Interest: The AAGs assist and help to guide Staff. Summary Suspensions: The AAGs review the case with Staff and provide their legal analysis to determine whether or not there is legal sufficiency for summary action.

Ms. Mamaluy stated that the AAGs are typically not involved at the investigative level. Dr. Martin questioned at what point it is the AAG's responsibility and how the transfer of cases is coordinated. Mr. Brekke stated the AAGs have a good working relationship with Staff and when an investigator has a question it first goes through the chain of command. Staff typically attempts to solve it internally, but if there is no resolution at that point, that is when the AAG would get involved. Staff typically has a quick turnaround time in providing the AAG with material requested for further legal analysis in preparing for hearing. Monty Lee, Chief Counsel, Licensing and Enforcement Section of the AGO, informed the Board that the AGO is still seeking to fill the Legal Advisor position and that when they are down to the final two or three candidates, the information will be shared with the Board. Mr. Lee said it would take approximately four to six weeks to fill the position. Board Members stated that it is important to work together with the AGO as they all strive for the same goal of protecting the public.

Call to the Public

Statements issued during the call to public appear beneath the case referenced.

FORMAL INTERVIEWS

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
3.	MD-07-0290A	AMB	SUSAN B. FLEMING, M.D.	14840	Continue the formal interview and negotiate to amend previous consent agreement dated 4/13/2007 to include the findings of this case as the findings in this case are similar to those in the previous consent agreement. Additionally, address the issues regarding Dr. Fleming's knowledge base and making appropriate referrals and/or consultations. The level of discipline will remain a Letter of Reprimand. One Year Probation to obtain 20 hours CME to address the new findings.

Dr. Goldfarb was recused from the case. Dr. Mackstaller stated that she knew Dr. Schneider but it would not affect her ability to adjudicate the case. Dr. Christopher Puca (general practice) addressed the Board during the call to public on behalf of Dr. Fleming. He said that Dr. Fleming did not act improperly by increasing medication doses due to increased patient pain. He said that obviously she knew that her patient did not have a new injury when she treated the patient's breakthrough pain. Dr. Puca commented that the noted deviations were based on allegations and assumptions that were incorrect. Dr. Jennifer Schneider also addressed the Board during the call to public on behalf of Dr. Fleming and stated that Dr. Fleming was accused of harming the patient by prescribing pain medication. She said there is no evidence that the patient was an addict or that he diverted any of the medication provided by Dr. Fleming. Dr. Schneider said that the patient did not complain of any harm. She said that studies show that only a minority of physicians are aware of the standard of care in their practice. Dr. Schneider said that it is unreasonable for the Board to judge a physician's practice style in 1999 by the guidelines of 2008.

Dr. Fleming was present with legal counsel, Stephen Myers. Carol Peairs, M.D., Medical Consultant, summarized the case for the Board. Staff found that Dr. Fleming failed to obtain patient JS' previous medical record and did not identify objective evidence of a pain generator. Dr. Fleming failed to recognize JS' drug seeking behavior and approved early refills of both long and short term opioid medications. Dr. Fleming increased the medication without an evaluation for disease progression or for new injuries. Staff found it mitigating that Dr. Fleming signed a Consent Agreement for a Letter of Reprimand for a case that occurred after this case. Dr. Fleming stated that she first saw JS nine years ago when she was relatively new to the practice of pain management. She said it was wrong to say that the patient was abusing the Valium she prescribed. She said the patient never exceeded the prescribed dose and usually used less than what was allowed. She performed a thorough physical exam and history on the first visit. JS was not willing to pursue surgical intervention or any other interventional treatment. Dr. Fleming said that she appropriately placed the patient on an antidepressant and recommended psychiatric help and that this was when his pain levels increased as a result of psychosocial stress. Dr. Fleming said she has taken the appropriate steps to remediate the violations.

Dr. Fleming responded to questioning stating she did not have formal pain management training and that her training consisted of continuing medical education and personal experience. Dr. Fleming stated that she does not believe it is important to obtain a pain generator prior to treating a pain patient; however, it is important to do a thorough history and physical examination. Dr. Fleming also said that she does not believe that magnetic resonance images and computed tomography scans are important to follow the progress of a patient's disease. In 1999, Dr. Fleming did not routinely obtain previous medical records but that she now requests records on all patients. She said JS was already on narcotics which she verified on his initial visit and that she continued the medication. Dr. Lee noted that subsequent physicians documented drug seeking behavior in JS; however, Dr. Fleming said she did not address this. Dr. Lee noted that JS's medical records demonstrate that there was no further pursuit to take care of his stressors after he refused to seek psychiatric help. Dr. Fleming noted significant stenosis, but there was no recommendation in

her plan for a spine surgery or other options; she only continued his medications. Dr. Lee opined that JS was not well served in not allowing him the opportunity to have another opinion for an ongoing complaint.

Dr. Krishna commented that the standard of care in 1999 was not much different from the current standard of care. Dr. Mackstaller questioned why a thirty seven year-old man would have such pain that required so much pain medication. Dr. Fleming said that every patient's pain is their own and their degree of pain is basically what they tell you it is. Dr. Petelin commented that he was astounded by the strength and amount of pills prescribed to JS. Dr. Peairs opined that Dr. Fleming's type of treatment for JS was not appropriate and was associated with worsening of the psychological symptoms and that the amount of narcotics JS was given was considered high for his type of symptoms.

In closing, Mr. Myers said that in 2006, the Board commenced an earlier investigation of Dr. Fleming's pain management and prescribing of narcotics and authorization of refills. This matter resulted in a Consent Agreement for a Letter of Reprimand and Probation in the form of CME regarding prescribing. Mr. Myers said that he believed the Board fulfilled its duty to rehabilitate Dr. Fleming from her prior case. He opined that the public would be best served with a dismissal and a non-disciplinary Order for CME in pain management. Mr. Myers noted that Dr. Lee mentioned JS's cervical stenosis earlier in the interview, but stated that Dr. Fleming was not noticed on that issue and they were not prepared for that line of questioning.

MOTION: Dr. Martin moved to go into executive session.
SECONDED: Dr. Pardo
Vote: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

The Board went into Executive Session for legal advice at 2:56 p.m.
The Board returned to Open Session at 3:16 p.m.
No deliberations or discussions were made during Executive Session.

Dr. Lee said he was concerned that Dr. Fleming did not seem to utilize the tools available to her. She initiated treatment plans without the aid of objective testing to evaluate the adequacy or lack of adequacy of the plan and that JS was not given the option of seeking additional consultation. Dr. Lee said he did not believe that pain generators are always found in patients; however, one should at least attempt to find them. Dr. Lee confirmed with Anne Froedge, Assistant Attorney General, that Dr. Fleming's notice of this matter was adequate. Dr. Martin informed the Board that if it finds the deviations in this case are similar enough to Dr. Fleming's previous case, the Board may continue the formal interview to allow counsel the opportunity to draft or amend a consent agreement that would either add what was discussed at the same level or higher form of discipline. Dr. Krishna noted similarities between both cases but said he was concerned with Dr. Fleming's fund of knowledge. He said the quality of care was compromised because of her style of practice. Dr. Lee requested that the Consent Agreement be modified or amended to include the Board's additional concerns that arose from this current case. Dr. Lee said that a second Letter of Reprimand would not do anyone any service. He said the level of discipline remains the same as her previous Board Order. Dr. Lee pointed out that the main concerns are with Dr. Fleming's fund of knowledge and whether she has learned that appropriate consultation is for the patient's benefit. Dr. Martin questioned what the Board would do if there is another similar case in the future since an additional Letter of Reprimand is not warranted by this matter. Dr. Lee said the Board would deal with that issue when it arises.

MOTION: Dr. Lee moved to continue the formal interview and have counsel negotiate to amend the previous consent agreement dated 4/13/2007 to include the findings in this case as the findings in this case are similar to those in the previous consent agreement. Additionally, address the issues regarding Dr. Fleming's knowledge base and making appropriate referrals and/or consultations. The level of discipline will remain a Letter of Reprimand. One Year Probation to obtain 20 hours CME to address the new findings.
SECONDED: Dr. Mackstaller

Dr. Petelin clarified that this one year probation is in addition to what was already ordered. Dr. Pardo confirmed that the Consent Agreement will return to the Board for approval. If counsel cannot come to an agreement, the case will return to formal interview. Ms. Griffen clarified that the motion is to modify Dr. Fleming's previous Board Order.

ROLL CALL VOTE: Roll call vote was taken and the following Board Members voted in favor of the motion: Dr. Goldfarb, Ms. Griffen, Dr. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Martin, Dr. Petelin, and Dr. Schneider. The following Board Members voted against the motion: Dr. Pardo. The following Board Member was absent: Ms. Proulx.
VOTE: 9-yay, 1-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
4.	MD-07-0273A	AMB	ALLEN A. AGAPAY, M.D.	24148	Draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand for failing to review an abdominal CT scan result at the hospital and during multiple followup visits resulting in a delay of diagnosis of renal carcinoma. One Year Probation to obtain 20 hours CME in Ethics.

Dr. Martin said he trained with Dr. Agapay many years ago but it would not affect his ability to adjudicate the case. Dr. Agapay was present with legal counsel, Stephen Bullington. William Wolf, M.D., Medical Consultant, summarized the case for the Board. Staff found that Dr. Agapay failed to familiarize himself with the result of RR's abdominal CT scan ordered in the emergency room and he failed to review the CT scan report identifying a kidney mass when the report came to his office. Dr. Agapay said that he was informed of the report findings and was aware of the report, but the renal mass was not relayed to him. He has changed his practice so that when he is informed that a CT scan is obtained by one of his colleagues, he ensures that there is a handwritten note or he communicates directly with the radiologist for an interpretation.

The Board reviewed the patient's medical records, specifically the written dictations and notes of the CT scan. Dr. Agapay testified that he did not look at the CT scan personally because he had knowledge of it from the emergency room physician. Dr. Agapay stated in his deposition that he was not aware of the CT scan, nor did he review it personally. Dr. Petelin commented that it was unclear as to why Dr. Agapay wrote in the patient's chart that he had knowledge of the CT scan. In one instance he eluded to the fact that he received the information from the radiologist. Dr. Agapay responded that it was based upon recollection of that morning. He maintained that the information as dictated and written in his history and physical was information that he obtained from the emergency room physician. Dr. Krishna noted that the report was sent to Dr. Agapay's office and questioned if he should be held responsible for a report that was positive and sent to his office, without looking at it personally. Dr. Goldfarb wondered how the chart made it into the patient's medical record and at what point. Dr. Agapay responded that he did not know how it got there and that he initials every report that goes into a patient's chart in his office. Dr. Krishna questioned why Dr. Agapay did not review the CT scan after surgery.

In closing, Mr. Bullington stated that the term standard of care is intimidating for some medical providers to comment on. The very first call that was made by the emergency room physician was to the patient's primary care physician. Mr. Bullington said that litigation took place approximately five years following the actual care of this patient. The CT scan was interpreted via teleradiology and a report was written. He said the emergency room physician did not know the findings that were dictated by the radiologist until after surgery was performed by Dr. Agapay. He said Dr. Agapay recognizes his mistake and has changed his practice as a result of this case. Dr. Petelin said the standard of care requires a surgeon to be aware of the results of a CT scan by personal review of the report by discussion with the radiologist. The standard of care also requires review of the reports in the hospital and office charts. Dr. Agapay failed to go review the CT scan directly or the interpretation of the scan with the radiologist. Dr. Petelin said the harm was a delay in diagnosis of over three years of a potentially curable renal cell carcinoma resulting in death of the patient.

MOTION: Dr. Petelin moved for a finding of Unprofessional Conduct in violation of A.R.S. §32-1401 (27)(q) - Any conduct that is or might be harmful or dangerous to the health of the patient or the public.
SECONDED: Dr. Krishna

Dr. Goldfarb clarified that he is aware of the possibility for a report to get into a patient's file that unfortunately is not seen even in the best of circumstances. His decision to agree with unprofessional conduct has to do with what occurred at the time of surgery when Dr. Agapay did not have documentation that he actually saw or discussed the CT scan with the radiologist before surgery.

VOTE: 9-yay, 0-nay, 1-abstain, 0-recuse, 1-absent.
MOTION PASSED.

MOTION: Dr. Petelin moved for a draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand for failing to review an abdominal CT scan and/or subsequent report at the hospital and during multiple followup visits resulting in a loss of chance in the treatment of renal cell carcinoma. One year probation to obtain 20 hours CME in ethics.

Dr. Petelin said that Dr. Agapay's written reports are less credible based on his statements during his formal interview. Dr. Mackstaller noted that the patient was not being seen from 2001 to 2003 and the primary care physician noted that the patient was not taking his blood pressure medication. Dr. Pardo questioned if it would be a deviation from the standard of care for a surgeon in this particular case to not to have read the CT scan and acted upon it. Dr. Wolf stated that it was below the standard of care to not know the results of the CT scan. Dr. Mackstaller said that she was worried that the patient was not following up.

SECONDED: Dr. Krishna
ROLL CALL VOTE: Roll call vote was taken and the following Board Members voted in favor of the motion: Dr. Goldfarb, Ms. Griffen, Dr. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Pardo, Dr. Petelin, and Dr. Schneider. The following Board Member was abstained: Dr. Martin. The following Board Member was absent: Ms. Proulx.
VOTE: 9-yay, 0-nay, 1-abstain, 0-recuse, 1-absent.
MOTION PASSED.

THURSDAY, FEBRUARY 7, 2008

Call to Order
The meeting was called to order at 8:00 a.m.

Roll Call
The following Board Members were present: Dr. Goldfarb, Ms. Griffen, Dr. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, and Dr. Schneider. The following Board Member was absent: Ms. Proulx.

Call to the Public
Robert L. Mahanti, M.D., was present and spoke during the call to public. Dr. Mahanti received an Advisory Letter with non-disciplinary CME in August 2007. Dr. Mahanti stated his treatment of the patient met the standard of care in this case. He said he was not adequately noticed on the deviations discussed during his formal interview in August 2007 and he was not prepared to defend himself at the formal interview. Dr. Mahanti stated that he had previously attempted to appeal the Advisory Letter and CME; however, Staff informed him that non-disciplinary Advisory Letters are not appealable. Dr. Mahanti referred the Board to its Call to Public pamphlet where it states that a physician may appeal an Order of the Board.

All other statements issued during the call to public appear beneath the case referenced.

FORMAL HEARING MATTERS - CONSIDERATION OF ADMINISTRATIVE LAW JUDGE (ALJ) RECOMMENDATION

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
1.	MD-06-L020A	AMB	STANLEY S. RACZ, M.D.	N/A	Dismiss Appeal.

The Board Members confirmed that they received and reviewed the administrative record of this matter. Dean Brekke, AAG, summarized the case for the Board. Initially, the former Executive Director denied Dr. Racz's request for licensure. Dr. Racz appealed and the Board upheld the denial. Dr. Racz requested a formal hearing to review the matter and the ALJ upheld the decision to deny the request for licensure as Dr. Racz has not demonstrated that he has been monitored to show that he has maintained a level of sobriety. Mr. Brekke said the ALJ's recommendation to dismiss Dr. Racz's appeal is appropriate and the Board should adopt it accordingly.

MOTION: Goldfarb moved to adopt the ALJ recommended Finding of Fact.
SECONDED: Dr. Lee
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

MOTION: Dr. Goldfarb moved to adopt the ALJ's recommended Conclusions of Law.
SECONDED: Dr. Lee
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

MOTION: Dr. Goldfarb moved to adopt the ALJ's recommended Order for Dismissal of Appeal.
SECONDED: Dr. Lee
ROLL CALL VOTE: Roll call vote was taken and the following Board Members voted in favor of the motion: Dr. Goldfarb, Ms. Griffen, Dr. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, and Dr. Schneider. The following Board Member was absent: Ms. Proulx.
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
2.	MD-07-0892A	AMB	DAVID I. PLUMB, M.D.	37523	Modify the ALJ's recommended Order to lift the summary suspension and place the licensee under a Practice Limitation. Amend the Order to require Dr. Plumb to return to the full Board and receive its approval to return to independent practice.

The Board Members confirmed that they received and reviewed the administrative record for this case. Dr. Plumb was present with legal counsel, John Messing. Dean Brekke, AAG, summarized the matter for the Board. The Director of the Mayo Clinic residency program felt that Dr. Plumb was possibly suffering from mental illness. Dr. Plumb's evaluator opined that Dr. Plumb should return to his residency program, but should be monitored to ensure safety to patients. Dr. Plumb had no objections to the recommendation and agreed that they were appropriate. Mr. Brekke expressed that the appropriate Order would be a Practice Limitation rather than a Restriction because a Limitation is non-disciplinary and may be ordered when a physician has a physical or mental health issue.

MOTION: Dr. Petelin moved to accept the ALJ's recommended Findings of Fact.
SECONDED: Dr. Krishna
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

MOTION: Dr. Petelin moved to accept the ALJ's recommended Conclusions of Law.
SECONDED: Dr. Krishna
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

Dr. Goldfarb noted that the Order indicates Dr. Plumb will not enter independent practice until his treating psychiatrist allows him to do so. Mr. Brekke informed the Board that this matter would not return to the Board after Dr. Plumb's psychiatrist allows him to return to independent practice. The Board noted that the ALJ's recommended Order indicates that Dr. Plumb would be subject to two years of random drug and alcohol monitoring. Mr. Brekke said that Dr. Plumb underwent multiple drug screens with negative results, but there were allegations of drug and alcohol abuse.

MOTION: Dr. Krishna moved to modify the ALJ's recommended Order to lift the summary suspension and place the licensee under a Practice Limitation. Amend the Order to require Dr. Plumb to return to the full Board and receive its approval to return to independent practice.
SECONDED: Dr. Goldfarb
ROLL CALL VOTE: Roll call vote was taken and the following Board Members voted in favor of the motion: Dr. Goldfarb, Ms. Griffen, Dr. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, and Dr. Schneider. The following Board Member was absent: Ms. Proulx.
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
3.	MD-07-L015A	AMB	PATRICK J. DEAN, M.D.	N/A	**Reject the ALJ's recommended Order for Dismissal of the appeal. Accept the proposed Consent Agreement for a Letter of Reprimand with 5 Years Probation, as modified. The physician must obey all laws and his license shall be automatically revoked if any other medical board finds that he has practiced medicine without a license. Additionally, Dr. Dean is assessed a $5,000 fine to be paid prior to issuance of license.**

The Board Members confirmed that they received and reviewed the administrative record in this case. Stephanie Hackett was present on behalf of Dr. Dean. Ms. Hackett stated that Dr. Dean is a highly qualified physician; he is licensed in fifteen other states, and has never had a quality of care issue before. She suggested the Board reject the ALJ's recommended Findings of Fact as they are erroneous. Dr. Dean was disciplined by the North Carolina Medical Board for providing reviews of specimen cases without holding an active North Carolina medical license. Dr. Dean admitted to the conduct and consented to a Letter of Reprimand. Ms. Hackett said that although North Carolina reprimanded Dr. Dean, he was still granted a license. In addition, Dr. Dean read five slides from Arizona patients while his application for licensure was pending. Ms. Hackett said Dr. Dean immediately took remedial action to correct this by having an Arizona physician re-review the slides and submit revised reports.

Emma Mamaluy, AAG, said the State recommended that the Board adopt the ALJ's recommendations. Ms. Mamaluy directed the Board to a particular letter in the record from Dr. Dean to one of his clients urging his client to continue sending him specimen samples from North Carolina even though he was not licensed there and that it was a calculated risk he was willing to take. She further stated that the ALJ's recommendations are not erroneous and recommended the Board adopt them in their entirety. Ms. Mamaluy informed the Board that there are exemptions for physicians to practice medicine in Arizona; however, the exemption is for an actual single or infrequent consultation according to A.R.S. §32-1421B. Ms. Hackett stated the Arizona issue was an isolated incident and should fall under the exemption.

MOTION: Dr. Krishna moved to accept the ALJ recommended Finding of Fact and Conclusions of Law.
SECONDED: Dr. Lee
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

Dr. Krishna questioned how the Board would be able to grant the license, but issue discipline at the same time. Christopher Munns, Legal Advisor, informed the Board that it could issue disciplinary action while granting the license; however, it would need to be in the form of a consent agreement.

MOTION: Dr. Krishna moved to reject the ALJ's recommended Order for Dismissal and offer a Consent Agreement for a Letter of Reprimand. The Letter of Reprimand would be ordered upon issuance of license. If the Consent Agreement is not accepted, the ALJ decision stands as recommended.
SECONDED: Dr. Mackstaller

Mr. Munns recommended the Board table the matter so that both parties could discuss the consent agreement and return to the case later in the meeting. Dr. Pardo spoke against issuing Dr. Dean a license and Dr. Goldfarb was concerned that despite the North Carolina action, he was found to have committed the same misconduct in Arizona. Dr. Petelin spoke against the motion and

stated that he was concerned with the number of cases involved in the North Carolina incident. Dr. Schneider spoke in favor of the motion and said that granting Dr. Dean his license would not impose danger to the public; however, she was concerned that reviewing the slides possible imposed a financial incentive and suggested Dr. Dean pay a civil penalty. Dr. Mackstaller spoke in favor of the motion and said that she found the reviewing of the slides in Arizona to be accidental. Dr. Krishna said he understood that Dr. Dean's conduct was inappropriate, hence the recommended Letter of Reprimand. However, Dr. Krishna said that he did not find that patient care was compromised. Dr. Lee spoke against the motion and stated that Dr. Dean seemed to have been flaunting what was obvious law in North Carolina by what he stated in the letter to his client. Dr. Lefkowitz spoke in favor of the motion. Dr. Martin questioned the benefit versus risk of granting the license and stated that if Dr. Dean is truly a super specialist, then the community may benefit by his licensure. However, Dr. Martin noted that it is a privilege to practice medicine in Arizona and stated that not just anyone can participate amongst the medical community.

ROLL CALL VOTE: Roll call vote was taken and the following Board Members voted in favor of the motion: Ms. Griffen, Dr. Lefkowitz, Dr. Krishna, Dr. Mackstaller, and Dr. Schneider. The following Board Members voted against the motion: Dr. Goldfarb, Dr. Lee, Dr. Martin, Dr. Pardo and Dr. Petelin. The following Board Member was absent: Ms. Proulx.
VOTE: 5-yay, 5-nay, 0-abstain, 0-recuse, 1-absent.
MOTION FAILED.

MOTION: Dr. Lee moved to accept the ALJ's recommended Order for dismissal of the appeal.
SECONDED: Dr. Petelin
ROLL CALL VOTE: Roll call vote was taken and the following Board Members voted in favor of the motion: Dr. Goldfarb, Dr. Lee, Dr. Martin, Dr. Pardo, and Dr. Petelin. The following Board Members voted against the motion: Ms. Griffen, Dr. Krishna, Dr. Lefkowitz, Dr. Mackstaller, and Dr. Schneider. The following Board Member was absent: Ms. Proulx.
MOTION FAILED.

Dr. Martin proposed raising the level of discipline to a Decree of Censure, signifying that the Board takes these matters very seriously. Dr. Krishna opined that the case does not rise to the level of a Decree of Censure; and that Dr. Schneider's recommendation to impose a fine should be included in the consent agreement. Dr. Petelin opined that the level of discipline would have little or no impact on Dr. Dean's ability to practice. Dr. Lee said he was concerned with Dr. Dean's ethics and pattern of practice. He suggested including in any motion that the Board be made aware of action from other states during a probationary term. Dr. Mackstaller agreed.

MOTION: Dr. Krishna moved to reject the ALJ's recommended Order for dismissal of the appeal and offer the physician a Consent Agreement for a Letter of Reprimand with Five Years Probation. If the physician practices without a license in any other state, his Arizona license would be automatically revoked. Additionally, Dr. Dean is assessed a $5,000 civil penalty to be paid prior to issuance of his Arizona license. If the consent agreement is not accepted, the ALJ's decision stands as recommended.

Mr. Munns informed the Board that the Board would need to either reject the ALJ's recommended decision or table the matter until later in the meeting to allow both parties the opportunity to come to an agreement with regard to the consent. Dr. Krishna withdrew his motion and allow the matter to be tabled.

MOTION: Dr. Krishna moved to table the matter and have both parties agree to a Consent Agreement for a Letter of Reprimand, Probation, and Civil Penalty.
SECONDED: Dr. Lee
ROLL CALL VOTE: Roll call vote was taken and the following Board Members voted in favor of the motion: Dr. Goldfarb, Ms. Griffen, Dr. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, and Dr. Schneider. The following Board Member was absent: Ms. Proulx.
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

The Board returned to this matter following other business and Ms. Mamaluy presented the matter to the Board. She said both parties discussed the issues extensively and presented two versions of the consent agreement, one proposed by the State and the other by Dr. Dean's attorney. Ms. Hackett stated that Dr. Dean was willing to sign the consent agreement proposed by opposing counsel that contained minor changes. She explained that in the State's version, was what the Board requested with a few changes that would still comport with the law. Ms. Mamaluy altered Conclusions of Law number eight significantly from the ALJ's recommendation as it is now the exact opposite of what the ALJ found. Ms. Mamaluy also deleted Conclusions of Law number nine as it no longer applied if the Board were to grant Dr. Dean his license. Dr. Lee noted that it was a substantive change to leave out Findings of Fact, line forty-six and requested that it remain. Dr. Lee also requested that on page twelve, numbers forty-nine and fifty remain in the consent agreement.

MOTION: Dr. Goldfarb moved to reconsider the Findings of Fact and Conclusions of Law.
SECONDED: Ms. Griffen
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

Ms. Hackett requested the Board remove the wording "pattern of" from Conclusions of Law, paragraph eight, last sentence. Dr. Goldfarb agreed, but Dr. Lee asked that it remain based on earlier discussion regarding Dr. Dean's pattern of practice. Ms. Hackett confirmed that Dr. Dean is willing to sign the consent agreement with the language included.

MOTION: Dr. Krishna moved to go into executive session.
SECONDED: Dr. Pardo
Vote: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

The Board went into Executive Session for legal advice at 2:42 p.m.
The Board returned to Open Session at 2:45 p.m.
No deliberations or discussions were made during Executive Session.

MOTION: Dr. Goldfarb moved to reject the ALJ's recommended Order for Dismissal of the appeal. Accept the proposed consent agreement for a Letter of Reprimand with 5 Years Probation, as modified. The physician must obey all laws and his license shall be automatically revoked if any other medical board finds that he has practiced medicine without a license. Additionally, Dr. Dean is assessed a $5,000 fine to be paid prior to issuance of license.
SECONDED: Dr. Krishna

Dr. Pardo spoke against the motion and stated that she believed the Board should not grant Dr. Dean a license.

ROLL CALL VOTE: Roll call vote was taken and the following Board Members voted in favor of the motion: Dr. Goldfarb, Ms. Griffen, Dr. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Martin, and Dr. Schneider. The following Board Members voted against the motion: Dr. Pardo and Dr. Petelin. The following Board Member was absent: Ms. Proulx.
VOTE: 8-yay, 2-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
4.	MD-03-0749A MD-05-0798A MD-05-0173A MD-05-0888A	AMB	DAVID A. WILBIRT, M.D.	9920	Modify the ALJ's recommended Order for Revocation to assess the cost of the formal hearing to the physician.

The Board Members confirmed that they received and reviewed the administrative record in this matter. Phillip Overcash, Outside Counsel, summarized the matter for the Board. Dr. Wilbirt was no longer fit to practice medicine after he suffered a stroke in 2005. In 2005, Dr. Wilbirt signed a consent agreement preventing him from prescribing medication, but he continued to do so. Mr. Overcash recommended the Board accept the ALJ's recommended Findings of Fact, Conclusions of Law and Order to revoke Dr. Wilbirt's license.

MOTION: Dr. Lee moved to accept the ALJ recommended Finding of Fact and Conclusions of Law in all four cases.
SECONDED: Dr. Krishna
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

Chris Munns, AAG, informed the Board that it had the authority to charge the cost of the hearing to the physician; however, it would first need to modify the ALJ's recommended Order.

MOTION: Dr. Lee moved to modify the ALJ's recommended Order for Revocation to assess the cost of the formal hearing to the physician.
SECONDED: Dr. Krishna

Dr. Petelin questioned the cost of the hearing. Mr. Munns said the length and complexity of a case may vary; therefore, the cost does as well. Mr. Munns said the Board did not need state the exact amount as the cost is automatically charged.

ROLL CALL VOTE: Roll call vote was taken and the following Board Members voted in favor of the motion: Dr. Goldfarb, Ms. Griffen, Dr. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, and Dr. Schneider. The following Board Member was absent: Ms. Proulx.
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

OTHER BUSINESS

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	SUBJECT
1.	MD-04-0887A	AMB	MAX D. LIND, M.D.	4576	Rescind referral to formal hearing and accept the proposed Consent Agreement for Surrender of an active license.

Dr. Martin said he has retained Mr. Gaffaney's services in the past, but it would not affect his ability to adjudicate the case. Dr. Petelin also stated that he knew Mr. Gaffaney, but it would not affect his ability to adjudicate the case. Jerry Gaffaney, Outside Counsel, summarized the matter for the Board. Dr. Lind retired from the practice of medicine and acknowledged his misconduct. Dr. Lind signed a consent agreement to surrender his license to practice medicine in the state of Arizona. Mr. Gaffaney recommended the Board rescind its previous referral to formal hearing and accept the proposed consent agreement.

MOTION: Dr. Goldfarb moved to rescind referral to formal hearing and accept the proposed Consent Agreement for Surrender of an active license.
SECONDED: Dr. Krishna
ROLL CALL VOTE: Roll call vote was taken and the following Board Members voted in favor of the motion: Dr. Goldfarb, Ms. Griffen, Dr. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, and Dr. Schneider. The following Board Member was absent: Ms. Proulx.
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	SUBJECT
2.	MD-02-0093A	AMB	STEPHEN E. LINDSTROM, M.D.	7585	Rescind referral to formal hearing and accept the Consent Agreement for a Letter of Reprimand for failing to appropriately manage a high risk pregnancy by failing to refer a diabetic patient to specialized care in the presence of macrosomia and fetal intolerance of labor. Indefinite Practice Restriction to not practice obstetrics in any setting. Dr. Lindstrom may reapply to the Board to resume the practice of obstetrics after five years.

Mr. Gaffaney presented this case to the Board. He said the case arose from a case involving a patient that was seen by Dr. Lindstrom from November 1997 through May 1998 when the patient delivered a stillborn baby. In the interim before the hearing, Dr. Lindstrom ceased obstetrical practice and consented to a Letter of Reprimand.

MOTION: Dr. Goldfarb moved to rescind referral and accept the Consent Agreement for a Letter of Reprimand for failing to appropriately manage a high risk pregnancy by failing to refer a diabetic patient to specialized care in the presence of macrosomia and fetal intolerance of labor.
SECONDED: Dr. Mackstaller

Dr. Goldfarb noted that Finding of Fact number fifteen states that Dr. Lindstrom is no longer practicing obstetrics. Dr. Martin suggested amending the motion to add a practice restriction limiting Dr. Lindstrom from practicing obstetrics. Dr. Goldfarb agreed and amended his motion to include an indefinite practice restriction from practicing obstetrics in any setting. Dr. Mackstaller agreed.

AMENDED MOTION: Dr. Goldfarb moved to rescind referral to formal hearing and accept the Consent Agreement for a Letter of Reprimand for failing to appropriately manage a high risk pregnancy by failing to refer a diabetic patient to specialized care in the presence of macrosomia and fetal intolerance of labor. Indefinite Practice Restriction to not practice obstetrics in any setting. Dr. Lindstrom may reapply to the Board to resume the practice of obstetrics after five years.
SECONDED: Dr. Mackstaller

The Board confirmed that Dr. Lindstrom may petition the Board in five years to lift the practice restriction. The Board noted that this would allow the Board to have the final say in whether or not Dr. Lindstrom may return to practice. Staff informed the Board that Dr. Lindstrom would be monitored annually to ensure that he is complying with the restriction. The Board opined that Dr. Lindstrom should obtain more training in obstetrics prior to petitioning the Board to lift the restriction.

ROLL CALL VOTE: Roll call vote was taken and the following Board Members voted in favor of the motion: Dr. Goldfarb, Ms. Griffen, Dr. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, and Dr. Schneider. The following Board Member was absent: Ms. Proulx.
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
3.	MD-05-1166A	AMB	STEVEN CERVI-SKINNER, M.D.	26268	Rescind referral to formal hearing and accept the proposed Consent Agreement for a Decree of Censure, Practice Restriction and Probation for inappropriate supervision of a physician assistant, inadequate medical records, inadequate patient management on multiple patients, failure to maintain appropriate recordation of Schedule II and III's and for failure to furnish information in a timely manner to the Board. 30 Years Practice Restriction from supervising physician assistants.

Michael Sillyman, Outside Counsel, summarized the matter for the Board. Mr. Sillyman stated that this case involved a supervising physician who failed to adequately supervise a physician assistant working at a geographically separate location. Mr.

Sillyman recommended the Board rescind its referral to Formal Hearing and accept the proposed consent agreement. Andrew Plattner, legal counsel for Dr. Cervi-Skinner, stated that Dr. Cervi-Skinner agreed to the terms of the consent agreement.

MOTION: Dr. Goldfarb moved to rescind referral to Formal Hearing and accept the proposed Consent Agreement for a Decree of Censure, Practice Restriction and Probation for inappropriate supervision of a physician assistant, inadequate medical records, inadequate patient management on multiple patients, failure to maintain appropriate recordation of Schedule II and III's and for failure to furnish information in a timely manner to the Board. 30 Years Practice Restriction from supervising physician assistants.
SECONDED: Dr. Krishna
ROLL CALL VOTE: Roll call vote was taken and the following Board Members voted in favor of the motion: Dr. Goldfarb, Ms. Griffen, Dr. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, and Dr. Schneider. The following Board Member was absent: Ms. Proulx.
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
4.	MD-05-0866A	AMB	TIMOTHY J. GELETY, M.D.	21851	Draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand for not being available in a timely fashion to evaluate a postoperative patient.

Dr. Schneider was recused from this case. Stephanie Hackett was present on behalf of Dr. Gelety. Mr. Brekke summarized the matter for the Board. Dr. Gelety appeared for a formal interview in 2006 and the Board issued a Letter of Reprimand after finding deviations from the standard of care. The action was appealed and went to Superior Court where the judge found that one case was not supported by the evidence and dismissed the matter. In the second case, the judge felt that there was a difference between the findings of fact and the deviations. Ms. Hackett said that the case regarding patient YS was remanded to the Board for determining whether there was a deviation from the standard of care and whether such deviation warrants discipline. She said that given the Court's finding that Dr. Gelety did have coverage and was available, the Board should conclude that the two hour and fifteen minute period that he could not be reached does not constitute a deviation from the standard of care and should be dismissed. Mr. Brekke said it was clear from the Court's decision that the Board needed to reconsider the portion of time that Dr. Gelety was not available. Dr. Lee found Dr. Gelety deviated from the standard of care by failing to make himself available to a patient in a timely manner in a postoperative setting.

MOTION: Dr. Lee moved for a finding of Unprofessional Conduct in violation of A.R.S. §32-1401 (27)(q) - Any conduct that is or might be harmful or dangerous to the health of the patient or the public.
SECONDED: Dr. Petelin
VOTE: 9-yay, 0-nay, 1-abstain, 0-recuse, 1-absent.
MOTION PASSED.

MOTION: Dr. Lee moved for a draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand for not being available in a timely fashion to evaluate a postoperative patient.
SECONDED: Dr. Petelin

Dr. Krishna noted that there was no harm to the patient involved. Dr. Lee said his main concern was the timing and believed that Dr. Gelety was not immediately available to see the patient. Dr. Krishna questioned whether this matter rose to the level of discipline.

ROLL CALL VOTE: Roll call vote was taken and the following Board Members voted in favor of the motion: Ms. Griffen, Dr. Lee, and Dr. Petelin. The following Board Members voted against the motion: Dr. Krishna and Dr. Lefkowitz. The following Board Members were abstained: Dr. Goldfarb, Dr. Mackstaller, Dr. Martin, and Dr. Pardo. The following Board Member was recused: Dr. Schneider. The following Board Member was absent: Ms. Proulx.
VOTE: 3-yay, 2-nay, 4-abstain, 1-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
5.	MD-02-0713A	F.H.	HARA P. MISRA, M.D.	14933	Return for further investigation.

Dr. Krishna was recused from this case. Dean Brekke, AAG, presented this matter to the Board. This case was appealed to Superior Court and the Court upheld the Board's decision. The case was taken to the Court of Appeals who upheld part of the Board's decision. Mr. Brekke stated that there was an issue with the Board's medical consultant who made a statement before the Board that in preparing for his presentation, he reviewed peer review materials. The Court of Appeals found that the peer review materials referenced were not provided to Dr. Misra and his counsel for preparation of the formal interview. However, in reviewing the complete investigative file, Mr. Brekke said that there is nothing within the case file that would indicate that there were peer review materials. Additionally, Mr. Brekke stated that the medical consultant who made the statement is no longer with the Agency. Mr. Brekke recommended the Board return the matter for further investigation to start the review process from the beginning that would include having a second outside medical consultant review the case to determine if Dr. Misra met the standard of care. Peter Fisher, counsel for Dr. Misra, agreed with Mr. Brekke's recommendations.

MOTION: Dr. Lee moved to return this case for further investigation.
SECONDED: Dr. Petelin
VOTE: 9-yay, 0-nay, 0-abstain, 1-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
6.	MD-02-0749A	AMB	HARA P. MISRA, M.D.	14933	Issue a Letter of Reprimand for failure to properly manage complications related to a surgical procedure resulting in a potential life threatening condition. Two Year Probation with CME for the indications of placement of vena cava filters and undergo random chart reviews. The Board may take additional disciplinary or remedial action based on the results of the chart reviews. Dr. Misra has already completed the terms of his probation.

Dr. Krishna recused himself from this case. Mr. Brekke summarized the case for the Board. Dr. Misra appeared before the Board in 2004 and again in 2005 for a formal interview. Dr. Misra appealed the Board's decision and this case ultimately ended up in the Court of Appeals. The judge was concerned with finding of fact that stated there was actual harm to the patient. Mr. Brekke said there was consideration that maybe there was actual harm as the patient required a second surgery to remove the retained device through open heart surgery. However, the Board's evidence in the record pointed to potential harm. The Court of Appeals reversed that finding as there was no evidence to support actual harm.

Pete Fisher was present on behalf of Dr. Misra. He stated the Court of Appeals vacated the finding of unprofessional conduct. He said that without a finding of unprofessional conduct, the Board had no choice but to go forward with new findings. He recommended the Board reopen the matter and start over. Mr. Fisher opined that it was inappropriate for the Board to modify the Order rather than starting over as there are new Board Members who are unfamiliar to the case. Dr. Goldfarb directed Board Members to Dr. Misra's 2004 formal interview, in which Dr. Goldfarb articulated potential harm in this case. Dr. Goldfarb reiterated the potential harm was that the patient had an emergency situation in which there was an arrhythmia detected and faulted Dr. Misra for the failure to act in a timely manner.

MOTION: Dr. Martin moved to go into executive session.
SECONDED: Dr. Lee
Vote: 9-yay, 0-nay, 0-abstain, 1-recuse, 1-absent.
MOTION PASSED.

The Board went into Executive Session for legal advice at 10:58 a.m.
The Board returned to Open Session at 11:04 a.m.
No deliberations or discussions were made during Executive Session.

Dr. Goldfarb noted that the Court of Appeals found that there were grounds for basis of potential harm. Dr. Goldfarb further stated that although the Findings of Fact had a typographical error, there were still grounds for the action.

MOTION: Dr. Goldfarb moved to amend Findings of Fact number seventeen as recommended by the State; and to change Findings of Fact number eighteen to reflect that there was only one Letter of Reprimand on Dr. Misra's record.
SECONDED: Dr. Lee

Christopher Munns, AAG, asked Dr. Goldfarb to state on the record the grounds for unprofessional conduct.

MOTION: Dr. Goldfarb moved for a finding of Unprofessional Conduct in violation of A.R.S. §32-1401 (27)(q) - Any conduct that is or might be harmful or dangerous to the health of the patient or the public.
SECONDED: Dr. Pardo
VOTE: 9-yay, 0-nay, 0-abstain, 1-recuse, 1-absent.
MOTION PASSED.

MOTION: Dr. Goldfarb moved for a Letter of Reprimand for failure to properly manage complications related to a surgical procedure resulting in a potential life threatening condition. Two Year Probation with CME for the indications of placement of vena cava filters and undergo random chart reviews. The Board may take additional disciplinary or remedial action based on the results of the chart reviews. Dr. Misra has already completed the terms of his probation.
SECONDED: Dr. Lee

Dr. Goldfarb noted that the previous Order was for a Decree of Censure, but he felt the discipline should be a Letter of Reprimand. Dr. Pardo noted that a two year probationary period was included in the previous Order along with CME and random chart reviews. Staff informed the Board that Dr. Misra had complied with the Order while awaiting final adjudication of the case and his two year probation terminated in August 2007. The Board agreed to credit Dr. Misra for time served from the previous Order.

ROLL CALL VOTE: Roll call vote was taken and the following Board Members voted in favor of the motion: Dr. Goldfarb, Ms. Griffen, Dr. Lee, Dr. Lefkowitz, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, and Dr. Schneider. The following Board Member was recused: Dr. Krishna. The following Board Member was absent: Ms. Proulx.
VOTE: 9-yay, 0-nay, 0-abstain, 1-recuse, 1-absent.
MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	RESOLUTION
7.	MD-05-0620A	AMB	GEORGE E. STAVROS, M.D.	4409	Rescind referral to Formal Hearing and accept the Consent Agreement for a Two Year Probation including random chart reviews, annual documentation of his successful compliance with FAA medical records requirement, and provide Board Staff with appointment logs, calendars and FAA physical schedules for all places where he provides direct patient care or conducts physical examination.

Jerry Gaffaney, Outside Counsel, summarized the case for the Board. He informed the Board that this case was currently set for hearing in March 2008, but Dr. Stavros requested a settlement conference, which was granted. Mr. Gaffaney stated that at the conference, Dr. Stavros argued that there have been no complaints about him for a number of years. An agreement was reached and was drafted into a consent agreement that Dr. Stavros signed.

MOTION: Dr. Krishna moved to rescind referral to formal hearing and accept the Consent Agreement for a Two Year Probation including random chart reviews, annual documentation of his successful compliance with FAA medical records requirement, and provide Board Staff with appointment logs, calendars and FAA physical schedules for all places where he provides direct patient care or conducts physical examination.
SECONDED: Ms. Griffen
VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

FORMAL INTERVIEWS

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC.#	RESOLUTION
1.	MD-07-0571A	J.L.	DONALD E. PORTER, M.D.	13521	Draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand for failing to consider and pursue a diagnosis of pulmonary embolus and for failing to perform an adequate exam and measure vitals including pulse oximetry in a patient complaining of respiratory symptoms.

Drs. Lee and Goldfarb were recused from this case. Dr. Martin said he knew Mr. Giancola and has worked with him in the past but it would not affect his ability to adjudicate the case. Len Johnson was present and spoke during the call to public on behalf of the complainant. Mr. Johnson said Dr. Porter was SP's primary care physician. Mr. Johnson said that SP's family believed Dr. Porter should have detected the pulmonary embolus (PE) as he had access to her charts and films. Dr. Porter was present with legal counsel, Paul Giancola. Bhupendra Bhatheja, M.D., Medical Consultant, summarized the case for the Board. Staff found Dr. Porter failed to consider the diagnosis of PE prior to death when SP presented for evaluation with respiratory symptoms and failed to obtain pulse oximetry and vitals during follow-up visits. SP's death was identified as actual harm. Dr. Porter stated treating SP, he believed she was improving and that is why he continued her on medication. Dr. Porter informed the Board that SP was overweight when she first presented to him and that he thought SP's symptoms were related to her asthma and that is why he did not consider the diagnosis of PE. He did not obtain any vital signs on SP, but said that in retrospect he would have. Dr. Krishna noted that SP's asthma swayed Dr. Porter away from considering other diagnoses. Dr. Porter stated that SP would complain to him of knee pain, but never leg pain as this would have been told to the athletic trainers according to the University of Arizona's policies and procedures. Dr. Porter said that if he could do it again, he would have done many things differently.

Dr. Petelin questioned if Dr. Porter was aware of other professional athletes who had similar issues as SP and stated that PE is not a rare phenomenon. Dr. Petelin said he was having difficulty understanding why Dr. Porter did not consider PE as he should have at least considered a differential diagnosis. Dr. Martin noted that SP underwent orthopedic surgery prior to seeing Dr. Porter, she was on birth control, and that she was overweight and that he should have questioned SP regarding leg pain. Dr. Porter informed the Board that he orders D-Dimer tests more now in his practice than he did back then and that any patient that complains of hemoptysis is investigated further by him and he tries to obtain more historical clues. Dr. Martin opined that an aspirin a day may have benefited SP while Dr. Porter was seeing and treating her. In closing, Mr. Giancola stated that this was an extremely unusual case. He said that Dr. Porter now has a much higher index of suspicion for PE. Mr. Giancola informed the Board that another physician who saw SP two days after Dr. Porter came to the same conclusion. He said Dr. Porter met the standard of care in this case despite the unfortunate outcome. Dr. Krishna said SP's death probably could have been prevented if there was suspicion of anything more that URI and that the standard of care would require a physician to recognize a patient's presentation and should have been evaluated further for hemoptysis. Dr. Porter deviated from the standard of care by failing to further work up a patient with the perfect setup of PE.

MOTION: Dr. Krishna moved for a finding of Unprofessional Conduct in violation of A.R.S. §32-1401 (27)(q) - Any conduct that is or might be harmful or dangerous to the health of the patient or the public.
SECONDED: Dr. Petelin
VOTE: 8-yay, 0-nay, 0-abstain, 2-recuse, 1-absent.

MOTION PASSED.

Dr. Krishna commented that Mr. Giancola had good reasoning for an Advisory Letter, but SP's outcome makes this case rise to the level of discipline.

MOTION: Dr. Krishna moved for a draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand for failing to consider and pursue a diagnosis of pulmonary embolus and for failing to perform an adequate exam and measure vitals including pulse oximetry in a patient complaining of respiratory symptoms.
SECONDED: Dr. Petelin

Dr. Martin noted that on many occasions, even when there are adverse outcomes, a one time occurrence may only rise to the issuance of an Advisory Letter. However, he noted Mr. Giancola mentioned the standard of care for an average physician, but Dr. Martin said Dr. Porter is not an average physician. Dr. Mackstaller noted numerous mitigating factors in this case and stated that this was a one time occurrence. Dr. Petelin opined that PE is not as rare as stated by Mr. Giancola. He said student health communities may not see if often, but there are several cases of PE in the community. Dr. Petelin stated it was disconcerting to him that the physicians who treated SP did not consider the diagnosis of PE. Dr. Krishna stated that further work up should have been done. Dr. Mackstaller opined that this matter does not rise to the level of discipline as this was a one time occurrence. Dr. Krishna commented that this was not a one time occurrence as Dr. Porter saw SP on multiple occasions.

ROLL CALL VOTE: Roll call vote was taken and the following Board Members voted in favor of the motion: Ms. Griffen, Dr. Krishna, Dr. Petelin, and Dr. Schneider. The following Board Members voted against the motion: Dr. Mackstaller and Dr. Pardo. The following Board Members abstained: Dr. Lefkowitz and Dr. Martin. The following Board Members were recused: Dr. Goldfarb and Dr. Lee. The following Board Member was absent: Ms. Proulx.
VOTE: 4-yay, 2-nay, 2-abstain, 2-recuse, 1-absent.
MOTION PASSED.

The meeting adjourned at 3:39 p.m.

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Lisa S. Wynn, Executive Director